



S.A.(MD).No.692 of 2009

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on 23.02.2026

Delivered on 18.03.2026

CORAM

THE HONOURABLE MRS. JUSTICE N.MALA

S.A.(MD)No.692/2009

&

CMP.(MD).No.766/2026

- 1.S.Hithayadullah [Died]
- 2.Maisal Beevi [Died]
- 3.Muhammed Jameel
- 4.Nabila Begum
- 5.Sidhi Jahaana Begum
- 6.Shamila Begum

.. Appellants

****Appellants 2 to 6 are brought on record
as LR's of the deceased sole appellant vide
order dated 09.11.2016 made in CMP(MD).Nos.
10347 to 10349/2016 in SA(MD).No.692/2009.**

****Memo presented before the Court on 16.12.2021 is
recorded as the 2nd appellant died and appellants
3 to 6 who are already on record, are recorded as
LR's of the deceased 2nd appellant vide order of
this Court dated 16.12.2021 made in
SA(MD).No.692/2009.**



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Versus

1.Anwar Ali
2.Noorjahan

..

Respondents /
Defendants

Prayer:- Second Appeal filed under Section 100 of CPC, against the judgment and decree in AS.No.36/2007 on the file of the learned Subordinate Judge, Ramanathapuram, dated 05.01.2008, in confirming the judgment and decree of the learned District Munsif, Ramanathapuram, in OS.No.132/2004 dated 23.01.2007.

For Appellants : Mr.S.Sonai Muthu for Mr.S.Ramesh
For Respondents : Mr.M.Mohamed Ibram Saibu for
M/s.Ajmal Associates

JUDGMENT

(1)This Second Appeal is directed against the concurrent judgments and decrees of the Courts below, dismissing the suit filed by the plaintiff seeking declaration of title and permanent injunction.

(2)Brief facts of the case are as follows:

(a) The plaintiff is the appellant in the Second Appeal. The suit property is



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described as a vacant land, measuring 26 feet East-West and 22 feet North-South, in a larger extend of 86 feet East-West and 22 feet North-South, with the following boundaries:- North-defendants' house ; South-Sulthan's house ; East-Sardhar Khan house ; and West-plaintiff's house and a vacant site.

(b) The suit property originally belonged to one Muthuasanisai Rowther.

After his demise, his three sons, Kasim Mohammed Rowther, Ismail Rowther and Ayub Rowther, enjoyed the suit property and in the year 1937, they executed a registered Partition Deed in which, the suit property and its adjacent property, fell to the share of Kasim Mohammed Rowther and Ismail Rowther. Ismail Rowther was allotted the Northern portion and Kasim Mohammed Rowther was allotted the Southern portion. Ismail Rowther sold his share of the property to the plaintiff's mother, Beevi Ammal, on 02.07.1940, under a registered Sale Deed. Thereafter, the plaintiff's mother, Beevi Ammal, executed a Settlement Deed with respect to the aforesaid property in favour of the plaintiff and her two other sons. The plaintiff's brothers orally gifted [Hiba] their share to the plaintiff in the year 1975, pursuant thereto, the



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plaintiff became the exclusive owner of the Northern portion of the suit property and the adjacent properties. On 28.05.1976, Kasim Mohammed Rowther, sold his share in the Southern portion of the suit property, to the plaintiff under a Registered Sale Deed. The plaintiff pursuant to the above transactions, claimed to be the absolute owner of the entire property, i.e., North-South-22 feet and East-West-86 feet.

(c) The plaintiff stated that the suit property to an extent of 10 feet, was used as Kollai [backyard] by him. The defendants who were having property to the North of the suit property, without any right, tried to encroach upon the suit property and therefore, the plaintiff filed the suit for declaration of his title to the suit property and for permanent injunction, restraining the defendants from interfering with his peaceful possession and enjoyment. The plaintiff also claimed title to the property by adverse possession.

(d) The defendants filed a written statement, contending that the entire property is comprised in S.No.619, and that the sub-division number relating to the suit property had not been specified. According to them, in the absence of western boundary of the plaintiff's property, being



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clearly stated, the plaintiff could not claim the entire extent of 86 feet East-west and 22 feet North-South. The defendants denied that the plaintiff's predecessors in title, had any right over the property. They alleged that there existed a pathway to the West of the plaintiff's suit property, which had been suppressed by him and therefore, the claim of the plaintiff that the suit property formed a part of his house property, was false. The defendants also denied the title of the plaintiff's vendor, under the sale dated 02.07.1940, the Settlement Deed dated 02.09.1969, executed by the plaintiff's mother and the alleged oral gift [Hiba], said to have been made by the plaintiff's brothers in his favour . The defendants also disputed the Sale Deed dated 28.05.1976, and contended that the plaintiff could not claim title based on the said document. According to the defendants, the property lying to the east of the Panchayat road, belonged to them and not to the plaintiff. They further contended that the property situated to the South of plaintiff's house also belonged to them and therefore, the plaintiff's claim over the suit property was untenable.

(e) The defendants also pleaded that the suit property originally belonged



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to one Mohaideen Pichai Rowther and Mohaideen Kuppai Rowther and that, in the partition between them, the Northern portion was allotted to Mohaideen Pichai Rowther and the Southern portion was allotted to Mohaideen Kuppai Rowther. It was stated that Mohaideen Pichai Rowther, executed a Will dated 30.10.1937, bequeathing his share in the Northern portion to Mohammed Idris and his wife Ayesha Beevi. After his life time, the said property was enjoyed by Mohammed Idris and Ayesha Beevi. The defendants further stated that Mohaideen Kuppai Rowther sold the southern portion under a Sale Deed dated 03.10.1955, in favour of his daughter Ayesha Beevi. Thereafter, Mohammed Idris and his wife Ayesha Beevi were in exclusive possession and enjoyment of the entire properties including the suit property and had constructed a house on the Northern side while enjoying the suit property as a vacant land. It was also stated that the 1st defendant as a legal heir of Mohammed Idris and Ayesha Beevi, and also by virtue of a Settlement Deed executed by his father, continued to be in possession and enjoyment of the suit property along with the other properties. The defendants claimed title to the property



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by adverse possession and contended that the plaintiff was not entitled to any relief and that, the suit deserved to be dismissed.

- (f) Before the Trial Court, the plaintiff's wife was examined as PW1 and 9 documents were filed on the side of the plaintiff. The defendants examined 3 witnesses and marked 5 documents. An Advocate Commissioner was appointed and he submitted his Report and Plan under Exs.C1 to C3.
- (g) The Trial Court, on appreciation of the oral and documentary evidence, found that the plaintiff failed to establish the identity and title to the suit property. The Trial Court noted that in Ex.A2 [Sale Deed in favour of the plaintiff's mother] and Ex.A3 [Inam Settlement proceedings], the survey number of the property was not mentioned. The Trial Court further found that the boundaries mentioned in Ex.A2 did not correspond with the boundaries shown in the second schedule of the suit property and that the second schedule described in Ex.A3 did not correspond to the suit property. Consequently, the Trial Court held that the plaintiff failed to correlate the property covered under Exs.A2 and A3 with the suit property and therefore, rejected the claim



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of title.

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- (h) The Lower Appellate Court, on appreciation of the materials, concurred with the findings of the Trial Court. Placing reliance on the Report and Plan of the Advocate Commissioner, the Lower Appellate Court found that there existed a pathway to the east of the plaintiff's property and that the suit property was situated beyond the said pathway. The measurements reflected in the Commissioner's Report further indicated that the plaintiff was enjoying the property beyond the extent claimed by him under his title deeds. The Lower Appellate Court also observed that the plaintiff had not made any reference to the portion shown as IJKLMN in the Commissioner's plant, which was located to the west of his house property. It was further found that if the said portion was included within the plaintiff's claim, the extent would far exceed the measurements found in the plaintiff's documents.
- (i) On the above findings, the Lower Appellate Court held that the plaintiff had failed to establish the identity of the property claimed by him and dismissed the appeal. Aggrieved by the concurrent findings of the Courts below, the present second appeal is filed.



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(1)At the time of admission, this Court framed the following substantial question of law:-

“Whether the Courts below are right in holding that the plaintiff has not proved the title of the property on the ground that the survey number was not mentioned in the documents?”

(2)During the pendency of the second appeal, the sole appellant died and his legal heirs were brought on record as appellants 2 to 6.

(3)Heard both sides and perused the materials placed on record.

(4)It is an admitted position that the plaintiff’s claim is solely based on Exs.A1 to A4. In a suit for declaration of title, the burden is on the plaintiff to establish his title by correlating the property described in his documents with the property claimed in the suit. In the present case, both the Courts below concurrently found that the plaintiff failed to correlate the boundaries mentioned in the title deeds with the actual location of the suit property on ground. The absence of survey number in the title documents and the discrepancy in the boundary recitals have weighed with the Courts below in disbelieving the plaintiff’s claim.

(5)The report of the Advocate Commissioner and the plan further



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demonstrate that the suit property lies beyond the pathway situated to the east of the plaintiff's property, thereby rendering the plaintiff's claim doubtful. The measurements noted in the Commissioner's report also indicate that the plaintiff was in enjoyment of a larger extent than what is covered under his title deeds.

(6) It is well settled that in a suit for declaration, the plaintiff must succeed on the strength of his own title and not on the weakness of the defendant's case. In the absence of clear correlation between the title documents, boundaries and the identity of the property on ground, the plaintiff cannot seek declaration of title. This Court finds that in Ex.A4, the western boundary is described as "Sulthan's property", whereas in the plaint schedule, the same property is referred to as southern boundary, thereby further creating uncertainty regarding the identity of the property. The appellants have also filed CMP.(MD).No.766/2026, seeking to receive additional evidence, namely the original Partition Deed dated 25.03.1931, corresponding to Ex.A1. The respondents have opposed the said petition.

(7) Admission of additional evidence at the appellate stage, is governed by Order 41 Rule 27 of CPC and is not automatic. The petitioners themselves



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state that the certified copy of the document had been obtained by their father as early as in 2008. No convincing reason has been shown as to why the document was not produced before the Courts below. In such circumstances, this Court finds no justification to receive the said document as additional evidence.

(8)Both the Courts below have concurrently held, on proper appreciation of the evidence, that the plaintiff failed to establish his title to the suit property and possession. This Court finds no perversity or illegality in the findings, warranting interference under Section 100 of CPC.

(9)Hence, the Second Appeal fails and it is **dismissed**. Consequently, the connected miscellaneous petition in CMP.(MD).NO.766/2026 is also **dismissed**. However, there shall be no order as to costs.

18.03.2026

AP

Internet : Yes

To

1.The Sub Judge, Ramanathapuram.



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2.The District Munsif, Ramanathapuram.

3.The Section Officer

VR Section, Madurai Bench of Madras High Court
Madurai.



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N.MALA, J.

AP

Judgment in
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